

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMILY PENZO,

Plaintiff,

-against-

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Defendant.

USDC SDNY
DOCUMENT
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DATE FILED: 3/1/2023

1:19-cv-7478 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff Emily Penzo brings this action against her former employer, Consolidated Edison Company of New York, Inc. (“Con Ed”). Penzo alleges that Con Ed discriminated and retaliated against her in violation of the Americans with Disabilities Act (“ADA”), the Family Medical Leave Act (“FMLA”), the New York State Human Rights Law (“NYSHRL”), and the New York City Human Rights Law (“NYCHRL”).

Before the Court is the motion by Con Ed for summary judgment. [ECF No. 78]. Pursuant to Federal Rule of Civil Procedure 56, “[a] party may move for summary judgment, identifying each claim . . . on which summary judgment is sought.” However, Con Ed has failed to identify on which of the four claims brought in this action it seeks judgment in its favor. The only claim discussed throughout Con Ed’s brief is a Title VII claim for discrimination and retaliation. [ECF No. 79] (“Def. Br.”) at 18. But there is no Title VII claim alleged in the complaint.


Accordingly, there is no basis for granting the relief requested, and Con Ed’s motion for summary judgment must be denied. *See Cunningham v. McCluskey*, No. 05-cv-10169, 2011 WL 1157547, at *1 (S.D.N.Y. Mar. 3, 2011) (“Inasmuch as the plaintiff’s . . . motions for summary

judgment do not address any claims at issue in this action, there is no basis for granting the relief requested.”).

The Court will hold a Conference with the parties to discuss next steps on April 12, 2023 at 11:30 AM. The Conference will be held in Courtroom 18C of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York. The Clerk of Court respectfully is requested to close the pending motion at ECF No. 78.

SO ORDERED.

**Date: March 1, 2023
New York, NY**



**MARY KAY VYSKOCIL
United States District Judge**